

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-251760-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Thomas S. NORTHCUTT

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1841

Thomas S. NORTHCUTT

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 of Federal Regulations 137.30-1.

By order dated 27 April 1970, an Examiner of the United States Coast Guard revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as an oiler on board SS MARYLAND TRADER under authority of the document above described, on or about 2 March 1970, Appellant, at Guayanilla, Puerto Rico:

- (1) wrongfully and without permission has in his possession a dangerous weapon, to wit, a .38 caliber gun; and
- (2) assaulted and battered a fellow crewmember with a dangerous weapon by shooting him with a .38 caliber gun.

Appellant did not appear for hearing although served with proper notice. A local attorney at Ponce, who had been retained by Appellant for service in connection with pending criminal charges, appeared specially before the Examiner for the sole purpose of moving for a change of venue to Houston, Texas. The attorney stated that he could not appear for generally for Appellant, because he was a member only of the local bar and not of the Federal bar. When the Examiner informed counsel that there was no requirement that he be admitted to the Federal bar in order to appear generally for Appellant, counsel advised that he had been authorized only to appear for purposes of the motion. When the Examiner denied the motion on the grounds that no persuasive reason had been presented to transfer the case to Houston and that live witnesses were then and there available to Ponce, counsel withdrew. The Examiner, noting that Appellant had been advised that the hearing would proceed in his absence if he did not appear on notice, entered a plea of not guilty to the charge and each specification, and the hearing proceeded in absentia.

The Investigating Officer introduced in evidence several documents and the testimony of two witnesses.

There was no defense.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on 10 June 1970. Appeal was timely filed, and perfected on 9 October 1970.

FINDINGS OF FACT

On 2 and 3 March 1970, Appellant was serving as an oiler on board SS MARYLAND TRADER and acting under authority of his document while the ship was in the port of Guayaniulla, P.R..

Shortly before midnight on 2 March 1970, Appellant called his relief for the 0000-0400 watch, one Claude K. Wilson. A dispute arose, in the course of which Wilson pushed Appellant out of his forecastle.

When Wilson went below he stopped in the fireroom to inquire of Appellant's watch mate fireman what was wrong with Appellant. appeared at the fireroom door. Wilson told Appellant that he was relieved and prepared to push Appellant out of his way so as to enter the engineroom.

Appellant backed up about a foot, pulled a derringer-type pistol from his pocket, and shot Wilson in the groin.

Wilson was immediately hospitalized and was released on 18 March 1970. Appellant, having made a declaration that he had shot Wilson and that he would, if he still had the weapon, do it again, was incarcerated in a Ponce jail until 18 March 1970. The hearing in the instant case was held on 20 March 1970.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant had the pistol only for purposes of adding it to his gun collection, that he did not know it was loaded, and that it is too great a hardship to revoke his documents when he has only two years to go to earn a pension.

APPEARANCE: Appellant, pro se.

OPINION

I

Appellant's contentions merit no attention on appeal since the matters that he urges were not placed before the Examiner and no valid excuse has been proffered for his failure to appear on notice. Still, since the order in this case is subject to further review, brief mention will be made to dispose of the matters that Appellant has raised.

II

If Appellant's statement that he had possession of the German-made derringer-type pistol only because he was a gun collector could be believed it would bear only on the lawfulness of his possession of the weapon, dealt with in the first specification, not with his use of the weapon, dealt with in the second specification. Nevertheless, the possession of the weapon aboard the vessel, for whatever private purpose, was wrongful.

If Appellant's statement that he did not know the weapon was loaded could be believed, he was obviously, and especially as a self-proclaimed gun-lover and gun collector, guilty of the grossest kind of negligence, such as to amount to pure misconduct, in discharging the weapon at another human.

These contentions of Appellant are completely beyond belief in the context of the instant case.

If Appellant had in fact bought the weapon because he was a collector of firearms, this would not explain his possession of the weapon on his person at the end of a routine four hour watch as oiler in an engineroom. If Appellant had believed in fact that the weapon was not loaded it would be difficult to understand why he drew it from his pocket and went through the action of discharging it at another person.

There is evidence in the record that Appellant armed himself after his encounter with Wilson when calling Wilson to relieve the watch, but the matter need not be pressed. Even with Appellant's assertions, made for the first time on appeal, there is no question that as a matter of fact he engaged in a cold-blooded shooting of another crewmember.

The Examiner's findings on this matter could not have been otherwise.

III

The order of the Examiner was appropriate regardless of hardship to Appellant. Appellant appears to believe that an order of revocation, absolutely appropriate in the case of a shooting of another person, should not be approved because he is within two years of attaining pension benefits. If an order of revocation is appropriate in any case it remains so despite the nearness of attainment of a pension. Appellant's argument implies that a form of immunity should be granted to seamen who commit any act of misconduct, shooting another seaman, molestation of a passenger, possession of or association with narcotics, as long as the seaman is in within some reasonable sight of a pension. The theory must be rejected out of hand.

When an offense merits revocation, revocation is the only appropriate order.

IV

A comment on labeling in procedural matters may be made here.

At the conclusion of the hearing on the record before the Examiner he made findings that the charge and specifications had been proved. He did this on 20 March 1970, and the record shows that all this occurred at Ponce, Puerto Rico. The Examiner's "Report of Hearing" (CG-2639D) comes from the Examiner at Jacksonville, Fla. The "Decision" of the Examiner is dated on 7 April 1970 at San Juan, Puerto Rico.

Lest any further review of this matter raise a question as to where or when things were done, I take official notice that hearings in Puerto Rico are held by an examiner whose duty base is Jacksonville, Florida, and that many acts of the Jacksonville examiner are performed in that city no matter where the hearing was held. I take official notice also that Ponce, P.R., is within the marine inspection zone the office of which is located at San Juan.

This explains why, on the procedural forms, actions in this case appear to emanate from Ponce, San Juan, and Jacksonville when the actual hearing was held at Ponce with the Examiner entering his written decision after his return to Jacksonville.

ORDER

The order of the Examiner dated 7 April 1970 is AFFIRMED.

C.R. BENDER
ADMIRAL, U. S. COAST GUARD

COMMANDANT

Signed at Washington, D.C., this 7th day of June 1971.

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Appeal

Issue raised first time on

Revocation or suspension

For assault, appropriateness